

EXHIBIT A-37

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAMES HAYDEN,

Plaintiff,

v.

2K GAMES, INC. et al.,

Defendants.

CASE NO. 1:17-cv-02635-CAB

JUDGE CHRISTOPHER A. BOYKO

**DEFENDANTS 2K GAMES, INC. AND
TAKE-TWO INTERACTIVE
SOFTWARE, INC.'S OBJECTIONS AND
RESPONSES TO PLAINTIFF JAMES
HAYDEN'S FIRST SET OF REQUESTS
FOR ADMISSION**

Pursuant to Federal Rules of Civil Procedure 26 and 36, Defendants 2K Games, Inc. and Take-Two Interactive Software, Inc. (collectively “Take-Two” or “Defendants”), by and through their undersigned counsel, hereby respond to Plaintiff James Hayden’s (“Hayden” or “Plaintiff”) Requests for Admission, served on May 2, 2019 (the “Requests for Admission” or “Requests,” and each individually, a “Request”)* in the above-captioned action (“Litigation”) as follows:

* For the convenience of the parties, Take-Two provides one response to the Requests for Admission issued to 2K Games, Inc. and Take-Two Interactive Software, Inc.

REQUEST FOR ADMISSION NO. 44:

Admit that the Shoulder Stars Tattoo that is depicted in NBA 2K18 is substantially similar to the Shoulder Stars Tattoo.

RESPONSE TO REQUEST FOR ADMISSION NO. 44:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request to the extent that the term “Shoulder Stars Tattoo” is misleading as indicated in General Objection No. 13. Take-Two objects to this Request to the extent that it calls for a legal conclusion with respect to the phrase “substantially similar.” Subject to and without waiving the foregoing objections, Take-Two denies this Request and states that Take-Two did not depict Plaintiff’s sketches of the NBA Players’ Tattoos.

REQUEST FOR ADMISSION NO. 45:

Admit that the Shoulder Stars Tattoo that is depicted in NBA 2K18 is a copy of the Shoulder Stars Tattoo.

RESPONSE TO REQUEST FOR ADMISSION NO. 45:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request to the extent that the term “Shoulder Stars Tattoo” is misleading as indicated in General Objection No. 13. Take-Two objects to this Request as vague and ambiguous to the extent that the term “copy” is unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request and states that Take-Two did not depict Plaintiff’s sketches of the NBA Players’ Tattoos.

REQUEST FOR ADMISSION NO. 46:

Admit that You had access to the Fire Tattoo before NBA 2K16 was developed.

RESPONSE TO REQUEST FOR ADMISSION NO. 46:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request to the extent that the term “You” is overly broad and unduly burdensome as indicated in General Objection No. 9. Take-Two objects to this Request as vague and ambiguous to the extent that the terms “access” and “developed” are unclear and undefined. Take-Two objects to this Request to the extent that it calls for a legal conclusion with respect to the term “access.” Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that it was able to view NBA players’ tattoos because their tattoos are part of their likenesses that are regularly on display by virtue of their roles as professional athletes.

REQUEST FOR ADMISSION NO. 47:

Admit that the Fire Tattoo is depicted in *NBA 2K16*.

RESPONSE TO REQUEST FOR ADMISSION NO. 47:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the term “depicted” is unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K16*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 48:

Admit that the Fire Tattoo is depicted on the Danny Green avatar in *NBA 2K16*.

RESPONSE TO REQUEST FOR ADMISSION NO. 48:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent

that the terms “depicted” and “avatar” are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this request except admits that Danny Green is depicted realistically in *NBA 2K16*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 49:

Admit that the Fire Tattoo that is depicted in NBA 2K16 is substantially similar to the Fire Tattoo.

RESPONSE TO REQUEST FOR ADMISSION NO. 49:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the term “depicted” is unclear and undefined. Take-Two objects to this Request to the extent that it calls for a legal conclusion with respect to the phrase “substantially similar.” Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K16*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 50:

Admit that the Fire Tattoo that is depicted in NBA 2K16 is a copy of the Fire Tattoo.

RESPONSE TO REQUEST FOR ADMISSION NO. 50:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the terms “depicted” and “copy” are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K16*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 51:

Admit that You had access to the Fire Tattoo before NBA 2K17 was developed.

RESPONSE TO REQUEST FOR ADMISSION NO. 51:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request to the extent that the term “You” is overly broad and unduly burdensome as indicated in General Objection No. 9. Take-Two objects to this Request as vague and ambiguous to the extent that the terms “access” and “developed” are unclear and undefined. Take-Two objects to this Request to the extent that it calls for a legal conclusion with respect to the term “access.” Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Take-Two was able to view NBA players’ tattoos because their tattoos are part of their likenesses that are regularly on display by virtue of their roles as professional athletes.

REQUEST FOR ADMISSION NO. 52:

Admit that the Fire Tattoo is depicted in NBA 2K17.

RESPONSE TO REQUEST FOR ADMISSION NO. 52:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the term “depicted” is unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K17*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 53:

Admit that the Fire Tattoo is depicted on the Danny Green avatar in NBA 2K17.

RESPONSE TO REQUEST FOR ADMISSION NO. 53:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the terms “depicted” and “avatar” are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K17*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 54:

Admit that the Fire Tattoo that is depicted in NBA 2K17 is substantially similar to the Fire Tattoo.

RESPONSE TO REQUEST FOR ADMISSION NO. 54:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the term “depicted” is unclear and undefined. Take-Two objects to this Request to the extent that it calls for a legal conclusion with respect to the phrase “substantially similar.” Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K17*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 55:

Admit that the Fire Tattoo that is depicted in NBA 2K17 is a copy of the Fire Tattoo.

RESPONSE TO REQUEST FOR ADMISSION NO. 55:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the terms “depicted” and “copy” are unclear and undefined. Subject to and without waiving

the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K17*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 56:

Admit that You had access to the Fire Tattoo before NBA 2K18 was developed.

RESPONSE TO REQUEST FOR ADMISSION NO. 56:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request to the extent that the term “You” is overly broad and unduly burdensome as indicated in General Objection No. 9. Take-Two objects to this Request as vague and ambiguous to the extent that the terms “access” and “developed” are unclear and undefined. Take-Two objects to this Request to the extent that it calls for a legal conclusion with respect to the term “access.” Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Take-Two was able to view NBA players’ tattoos because their tattoos are part of their likenesses that are regularly on display by virtue of their roles as professional athletes.

REQUEST FOR ADMISSION NO. 57:

Admit that the Fire Tattoo is depicted in NBA 2K18.

RESPONSE TO REQUEST FOR ADMISSION NO. 57:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the term “depicted” is unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K18*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 58:

Admit that the Fire Tattoo is depicted on the Danny Green avatar in NBA 2K18.

RESPONSE TO REQUEST FOR ADMISSION NO. 58:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the terms “depicted” and “avatar” are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K18*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 59:

Admit that the Fire Tattoo that is depicted in NBA 2K18 is substantially similar to the Fire Tattoo.

RESPONSE TO REQUEST FOR ADMISSION NO. 59:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the term “depicted” is unclear and undefined. Take-Two objects to this Request to the extent that it calls for a legal conclusion with respect to the phrase “substantially similar.” Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K18*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 60:

Admit that the Fire Tattoo that is depicted in NBA 2K18 is a copy of the Fire Tattoo.

RESPONSE TO REQUEST FOR ADMISSION NO. 60:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent

that the terms “depicted” and “copy” are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K18*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 61:

Admit that You had access to the Scroll Tattoo before NBA 2K16 was developed.

RESPONSE TO REQUEST FOR ADMISSION NO. 61:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request to the extent that the term “You” is overly broad and unduly burdensome as indicated in General Objection No. 9. Take-Two objects to this Request as vague and ambiguous to the extent that the terms “access” and “developed” are unclear and undefined. Take-Two objects to this Request to the extent that it calls for a legal conclusion with respect to the term “access.” Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Take-Two was able to view NBA players’ tattoos because their tattoos are part of their likenesses that are regularly on display by virtue of their roles as professional athletes.

REQUEST FOR ADMISSION NO. 62:

Admit that the Scroll Tattoo is depicted in NBA 2K16.

RESPONSE TO REQUEST FOR ADMISSION NO. 62:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the term “depicted” is unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K16*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 63:

Admit that the Scroll Tattoo is depicted on the Danny Green avatar in NBA 2K16.

RESPONSE TO REQUEST FOR ADMISSION NO. 63:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the terms “depicted” and “avatar” are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K16*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 64:

Admit that the Scroll Tattoo that is depicted in NBA 2K16 is substantially similar to the Scroll Tattoo.

RESPONSE TO REQUEST FOR ADMISSION NO. 64:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the term “depicted” is unclear and undefined. Take-Two objects to this Request to the extent that it calls for a legal conclusion with respect to the phrase “substantially similar.” Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K16*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 65:

Admit that the Scroll Tattoo that is depicted in NBA 2K16 is a copy of the Scroll Tattoo.

RESPONSE TO REQUEST FOR ADMISSION NO. 65:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent

that the terms “depicted” and “copy” are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K16*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 66:

Admit that You had access to the Scroll Tattoo before NBA 2K17 was developed.

RESPONSE TO REQUEST FOR ADMISSION NO. 66:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request to the extent that the term “You” is overly broad and unduly burdensome as indicated in General Objection No. 9. Take-Two objects to this Request as vague and ambiguous to the extent that the terms “access” and “developed” are unclear and undefined. Take-Two objects to this Request to the extent that it calls for a legal conclusion with respect to the term “access.” Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Take-Two was able to view NBA players’ tattoos because their tattoos are part of their likenesses that are regularly on display by virtue of their roles as professional athletes.

REQUEST FOR ADMISSION NO. 67:

Admit that the Scroll Tattoo is depicted in NBA 2K17.

RESPONSE TO REQUEST FOR ADMISSION NO. 67:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the term “depicted” is unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K17*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 68:

Admit that the Scroll Tattoo is depicted on the Danny Green avatar in NBA 2K17.

RESPONSE TO REQUEST FOR ADMISSION NO. 68:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the terms “depicted” and “avatar” are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K17*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 69:

Admit that the Scroll Tattoo that is depicted in NBA 2K17 is substantially similar to the Scroll Tattoo.

RESPONSE TO REQUEST FOR ADMISSION NO. 69:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the term “depicted” is unclear and undefined. Take-Two objects to this Request to the extent that it calls for a legal conclusion with respect to the phrase “substantially similar.” Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K17*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 70:

Admit that the Scroll Tattoo that is depicted in NBA 2K17 is a copy of the Scroll Tattoo.

RESPONSE TO REQUEST FOR ADMISSION NO. 70:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the terms “depicted” and “copy” are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K17*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 71:

Admit that You had access to the Scroll Tattoo before NBA 2K18 was developed.

RESPONSE TO REQUEST FOR ADMISSION NO. 71:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request to the extent that the term “You” is overly broad and unduly burdensome as indicated in General Objection No. 9. Take-Two objects to this Request as vague and ambiguous to the extent that the terms “access” and “developed” are unclear and undefined. Take-Two objects to this Request to the extent that it calls for a legal conclusion with respect to the term “access.” Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Take-Two was able to view NBA players’ tattoos because their tattoos are part of their likenesses that are regularly on display by virtue of their roles as professional athletes.

REQUEST FOR ADMISSION NO. 72:

Admit that the Scroll Tattoo is depicted in NBA 2K18.

RESPONSE TO REQUEST FOR ADMISSION NO. 72:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent

that the term “depicted” is unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K18*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 73:

Admit that the Scroll Tattoo is depicted on the Danny Green avatar in *NBA 2K18*.

RESPONSE TO REQUEST FOR ADMISSION NO. 73:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the terms “depicted” and “avatar” are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K18*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 74:

Admit that the Scroll Tattoo that is depicted in *NBA 2K18* is substantially similar to the Scroll Tattoo.

RESPONSE TO REQUEST FOR ADMISSION NO. 74:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the term “depicted” is unclear and undefined. Take-Two objects to this Request to the extent that it calls for a legal conclusion with respect to the phrase “substantially similar.” Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K18*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 75:

Admit that the Scroll Tattoo that is depicted in NBA 2K18 is a copy of the Scroll Tattoo.

RESPONSE TO REQUEST FOR ADMISSION NO. 75:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the terms “depicted” and “copy” are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Danny Green is depicted realistically in *NBA 2K18*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 76:

Admit that You had access to the Brother’s Keeper Tattoo before NBA 2K16 was developed.

RESPONSE TO REQUEST FOR ADMISSION NO. 76:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request to the extent that the term “You” is overly broad and unduly burdensome as indicated in General Objection No. 9. Take-Two objects to this Request as vague and ambiguous to the extent that the terms “access” and “developed” are unclear and undefined. Take-Two objects to this Request to the extent that it calls for a legal conclusion with respect to the term “access.” Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Take-Two was able to view NBA players’ tattoos because their tattoos are part of their likenesses that are regularly on display by virtue of their roles as professional athletes.

REQUEST FOR ADMISSION NO. 77:

Admit that the Brother's Keeper Tattoo is depicted in NBA 2K16.

RESPONSE TO REQUEST FOR ADMISSION NO. 77:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the term "depicted" is unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Tristan Thompson is depicted realistically in *NBA 2K16*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 78:

Admit that the Brother's Keeper Tattoo is depicted on the Tristan Thompson avatar in NBA 2K16.

RESPONSE TO REQUEST FOR ADMISSION NO. 78:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the terms "depicted" and "avatar" are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Tristan Thompson is depicted realistically in *NBA 2K16*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 79:

Admit that a copy of the Brother's Keeper Tattoo that is depicted in NBA 2K16 is substantially similar to the Brother's Keeper Tattoo.

RESPONSE TO REQUEST FOR ADMISSION NO. 79:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the term "depicted" is unclear and undefined. Take-Two objects to this Request to the

extent that it calls for a legal conclusion with respect to the phrase “substantially similar.”

Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Tristan Thompson is depicted realistically in *NBA 2K16*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 80:

Admit that the Brother’s Keeper Tattoo that is depicted in *NBA 2K16* is a copy of the Brother’s Keeper Tattoo.

RESPONSE TO REQUEST FOR ADMISSION NO. 80:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the terms “depicted” and “copy” are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Tristan Thompson is depicted realistically in *NBA 2K16*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 81:

Admit that You had access to the Brother’s Keeper Tattoo before *NBA 2K17* was developed.

RESPONSE TO REQUEST FOR ADMISSION NO. 81:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request to the extent that the term “You” is overly broad and unduly burdensome as indicated in General Objection No. 9. Take-Two objects to this Request as vague and ambiguous to the extent that the terms “access” and “developed” are unclear and undefined. Take-Two objects to this Request to the extent that it calls for a legal conclusion with respect to the term “access.” Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Take-Two was able to

view NBA players' tattoos because their tattoos are part of their likenesses that are regularly on display by virtue of their roles as professional athletes.

REQUEST FOR ADMISSION NO. 82:

Admit that the Brother's Keeper Tattoo is depicted in NBA 2K17.

RESPONSE TO REQUEST FOR ADMISSION NO. 82:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the term "depicted" is unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Tristan Thompson is depicted realistically in *NBA 2K17*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 83:

Admit that the Brother's Keeper Tattoo is depicted on the Tristan Thompson avatar in NBA 2K17.

RESPONSE TO REQUEST FOR ADMISSION NO. 83:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the terms "depicted" and "avatar" are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Tristan Thompson is depicted realistically in *NBA 2K17*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 84:

Admit that a copy of the Brother's Keeper Tattoo that is depicted in NBA 2K17 is substantially similar to the Brother's Keeper Tattoo.

RESPONSE TO REQUEST FOR ADMISSION NO. 84:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the term “depicted” is unclear and undefined. Take-Two objects to this Request to the extent that it calls for a legal conclusion with respect to the phrase “substantially similar.” Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Tristan Thompson is depicted realistically in *NBA 2K17*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 85:

Admit that the Brother’s Keeper Tattoo that is depicted in *NBA 2K17* is a copy of the Brother’s Keeper Tattoo.

RESPONSE TO REQUEST FOR ADMISSION NO. 85:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the terms “depicted” and “copy” are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Tristan Thompson is depicted realistically in *NBA 2K17*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 86:

Admit that You had access to the Brother’s Keeper Tattoo before *NBA 2K18* was developed.

RESPONSE TO REQUEST FOR ADMISSION NO. 86:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request to the extent that the term “You” is overly broad and unduly burdensome as indicated in General Objection No. 9. Take-Two

objects to this Request as vague and ambiguous to the extent that the terms “access” and “developed” are unclear and undefined. Take-Two objects to this Request to the extent that it calls for a legal conclusion with respect to the term “access.” Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Take-Two was able to view NBA players’ tattoos because their tattoos are part of their likenesses that are regularly on display by virtue of their roles as professional athletes.

REQUEST FOR ADMISSION NO. 87:

Admit that the Brother’s Keeper Tattoo is depicted in NBA 2K18.

RESPONSE TO REQUEST FOR ADMISSION NO. 87:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the term “depicted” is unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Tristan Thompson is depicted realistically in *NBA 2K18*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 88:

Admit that the Brother’s Keeper Tattoo is depicted on the Tristan Thompson avatar in NBA 2K18.

RESPONSE TO REQUEST FOR ADMISSION NO. 88:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the terms “depicted” and “avatar” are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Tristan Thompson is depicted realistically in *NBA 2K18*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 89:

Admit that a copy of the Brother's Keeper Tattoo that is depicted in NBA 2K18 is substantially similar to the Brother's Keeper Tattoo.

RESPONSE TO REQUEST FOR ADMISSION NO. 89:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the term "depicted" is unclear and undefined. Take-Two objects to this Request to the extent that it calls for a legal conclusion with respect to the phrase "substantially similar." Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Tristan Thompson is depicted realistically in *NBA 2K18*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 90:

Admit that the Brother's Keeper Tattoo that is depicted in NBA 2K18 is a copy of the Brother's Keeper Tattoo.

RESPONSE TO REQUEST FOR ADMISSION NO. 90:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the terms "depicted" and "copy" are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Tristan Thompson is depicted realistically in *NBA 2K18*, including the tattoos he bears in real life.

REQUEST FOR ADMISSION NO. 91:

Admit that You intended to depict Hayden's Registered Works as realistically as possible in NBA 2K16.

RESPONSE TO REQUEST FOR ADMISSION NO. 91:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request to the extent that the term “You” is overly broad and unduly burdensome as indicated in General Objection No. 9. Take-Two further objects to this Request to the extent that the term “Hayden’s Registered Works” is vague and ambiguous as indicated in General Objection No. 10. Take-Two also objects to this Request as vague and ambiguous to the extent that the terms “depict” and “realistically” are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that *NBA 2K16* was designed to portray the way the NBA Players appear in real life.

REQUEST FOR ADMISSION NO. 92:

Admit that You intended to depict Hayden’s Registered Works as realistically as possible in *NBA 2K17*.

RESPONSE TO REQUEST FOR ADMISSION NO. 92:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request to the extent that the term “You” is overly broad and unduly burdensome as indicated in General Objection No. 9. Take-Two further objects to this Request to the extent that the term “Hayden’s Registered Works” is vague and ambiguous as indicated in General Objection No. 10. Take-Two also objects to this Request as vague and ambiguous to the extent that the terms “depict” and “realistically” are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that *NBA 2K17* was designed to portray the way the NBA Players appear in real life.

REQUEST FOR ADMISSION NO. 93:

Admit that You intended to depict Hayden's Registered Works as realistically as possible in NBA 2K18.

RESPONSE TO REQUEST FOR ADMISSION NO. 93:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request to the extent that the term "You" is overly broad and unduly burdensome as indicated in General Objection No. 9. Take-Two further objects to this Request to the extent that the term "Hayden's Registered Works" is vague and ambiguous as indicated in General Objection No. 10. Take-Two also objects to this Request as vague and ambiguous to the extent that the terms "depict" and "realistically" are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that *NBA 2K18* was designed to portray the way the NBA Players appear in real life.

REQUEST FOR ADMISSION NO. 94:

Admit that Hayden never authorized You to depict the Hayden Works.

RESPONSE TO REQUEST FOR ADMISSION NO. 94:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request to the extent that the term "You" is overly broad and unduly burdensome as indicated in General Objection No. 9. Take-Two further objects to this Request to the extent that the term "Hayden Works" is overly broad as indicated in General Objection No. 14. Take-Two objects to this Request as vague and ambiguous to the extent that the term "Hayden" is unclear and undefined. Take-Two objects to this Request as vague and ambiguous to the extent that the terms "depict" and "authorize" are unclear and

undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request.

REQUEST FOR ADMISSION NO. 95:

Admit that You never sought authorization from Hayden to depict the Hayden Works in the Accused Games.

RESPONSE TO REQUEST FOR ADMISSION NO. 95:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request to the extent that the term “You” is overly broad and unduly burdensome as indicated in General Objection No. 9. Take-Two further objects to this Request to the extent that the term “Hayden Works” is overly broad as indicated in General Objection No. 14. Take-Two objects to this Request as vague and ambiguous to the extent that the term “Hayden” is unclear and undefined. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the terms “depict” and “authorization” are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that Take-Two did not seek authorization from Hayden as Hayden already had authorized depiction in the manner that Take-Two depicted them.

REQUEST FOR ADMISSION NO. 96:

Admit that the tattoos depicted on the players in the Accused Games are part of the texture file(s) in the Accused Games’ software.

RESPONSE TO REQUEST FOR ADMISSION NO. 96:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the terms “depicted” and “texture file(s)” are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that the texture

files of each NBA Player contain all physical characteristics that the NBA Players have in real life, including tattoos.

REQUEST FOR ADMISSION NO. 97:

Admit that the texture file(s) for NBA 2K16 are identical to the texture file(s) for NBA 2K17.

RESPONSE TO REQUEST FOR ADMISSION NO. 97:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the terms “identical” and “texture file(s)” are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two denies this Request and states that the *NBA 2K17* video game contains texture files that are distinct from those used in *NBA 2K16* and adds many new features, graphics, and other audiovisual effects.

REQUEST FOR ADMISSION NO. 98:

Admit that the texture file(s) for NBA 2K16 are not identical to the texture file(s) for NBA 2K17.

RESPONSE TO REQUEST FOR ADMISSION NO. 98:

Take-Two incorporates by reference the above-stated general objections as if fully set forth herein. Take-Two specifically objects to this Request as vague and ambiguous to the extent that the terms “identical” and “texture file(s)” are unclear and undefined. Subject to and without waiving the foregoing objections, Take-Two admits this Request and states that the *NBA 2K17* video game contains texture files that are distinct from those used in *NBA 2K16* and adds many new features, graphics, and other audiovisual effects.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAMES HAYDEN,

Plaintiff,

v.

2K GAMES, INC. et al.,

Defendants.

CASE NO. 1:17-cv-02635-CAB

JUDGE CHRISTOPHER A. BOYKO

**DEFENDANTS 2K GAMES, INC. AND
TAKE-TWO INTERACTIVE
SOFTWARE, INC.'S OBJECTIONS AND
RESPONSES TO PLAINTIFF JAMES
HAYDEN'S SECOND SET OF
REQUESTS FOR ADMISSION**

Pursuant to Federal Rules of Civil Procedure 26 and 36, Defendants 2K Games, Inc. and Take-Two Interactive Software, Inc. (collectively “Take-Two” or “Defendants”), by and through their undersigned counsel, hereby respond to Plaintiff James Hayden’s (“Hayden” or “Plaintiff”) Requests for Admission, served on January 31, 2020 (the “Second Requests for Admission” and each individually, a “Request”)* in the above-captioned action (“Litigation”) as follows:

* For the convenience of the parties, Take-Two provides one response to the Second Requests for Admission issued to 2K Games, Inc. and Take-Two Interactive Software, Inc.

RESPONSES AND OBJECTIONS TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 102:

Admit that Defendants replicated the tattoos that Plaintiff inked on the NBA Players and put them in the Accused Games.

RESPONSE TO REQUEST FOR ADMISSION NO. 002:

Take-Two incorporates by reference the above-stated General Objections as if fully set forth herein. Take-Two objects to this Request as untimely as indicated in General Objection No. 1, as it was served on the last day of discovery with a response due on March 2, 2020, thirty days after fact discovery ended, in violation of Local Rule 16.1(b). Take-Two objects to this Request to the extent that it violates the parties' agreement as indicated in General Objection No. 2, as it is not a "follow-up" request as agreed upon on November 12, 2019, and instead seeks information that Plaintiff could have requested in a timely manner. Indeed, Plaintiff has asserted from the beginning of this Litigation that Take-Two replicated the NBA Players' Tattoos in the Accused Games. This Request is not based on new information.

Take-Two objects to this Request as vague and ambiguous to the extent that some of the works at issue are sketches for tattoos, created after the tattoos were inked, rather than the tattoos themselves, and the Request does not specify to which tattoos it refers. Take-Two objects to this Request as vague and ambiguous because the phrases "replicated the tattoos" and "put them in" are unclear and undefined.

Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that the NBA Players are depicted realistically in the Accused Games, including with tattoos they bear in real life.

REQUEST FOR ADMISSION NO. 103:

Admit that Defendants have no document embodying a policy regarding in-bound copyright licenses.

RESPONSE TO REQUEST FOR ADMISSION NO. 103:

Take-Two incorporates by reference the above-stated General Objections as if fully set forth herein. Take-Two objects to this Request as untimely as indicated in General Objection No. 1, as it was served on the last day of discovery with a response due on March 2, 2020, thirty days after fact discovery ended, in violation of Local Rule 16.1(b). Take-Two objects to this Request to the extent that it violates the parties' agreement as indicated in General Objection No. 2, as it is not a "follow-up" request as agreed upon on November 12, 2019, and instead seeks information that Plaintiff could have requested in a timely manner. Indeed, Defendants told Plaintiff on November 20, 2019 that no such written policies existed.

Take-Two objects to this Request as vague and ambiguous because the phrases "embodying a policy" and "in-bound copyright licenses" are unclear and undefined.

Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that, following a reasonable search, it has not identified any non-privileged documents listing policies regarding in-bound copyright licenses.

REQUEST FOR ADMISSION NO. 104:

Admit that Defendants tried to replicate the NBA Players' tattoos as closely as possible.

RESPONSE TO REQUEST FOR ADMISSION NO. 104:

Take-Two incorporates by reference the above-stated General Objections as if fully set forth herein. Take-Two objects to this Request as untimely as indicated in General Objection No. 1, as it was served on the last day of discovery with a response due on March 2, 2020, thirty days after fact discovery ended, in violation of Local Rule 16.1(b). Take-Two objects to this Request

to the extent that it violates the parties' agreement as indicated in General Objection No. 2, as it is not a "follow-up" request as agreed upon on November 12, 2019, and instead seeks information that Plaintiff could have requested in a timely manner. Indeed, Plaintiff has asserted from the beginning of this Litigation that Take-Two replicated the NBA Players' Tattoos in the Accused Games. This Request is not based on new information.

Take-Two objects to this Request as vague and ambiguous because the phrases "replicate the NBA Players' tattoos" and "as closely as possible" are unclear and undefined.

Subject to and without waiving the foregoing objections, Take-Two denies this Request except admits that the NBA Players are depicted as realistically as possible in the Accused Games, including with the tattoos they bear in real life.

Dated: March 2, 2020



Dale M. Cendali (admitted *pro hac vice*)
Joshua L. Simmons (admitted *pro hac vice*)
Christopher T. Ilardi (admitted *pro hac vice*)
Miranda D. Means (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
dale.cendali@kirkland.com
joshua.simmons@kirkland.com
chris.ilardi@kirkland.com
miranda.means@kirkland.com

David T. Movius (OH 0070132)
Matthew J. Cavanagh (OH 0079522)
MCDONALD HOPKINS LLC
600 Superior Avenue, East, Ste. 2100
Cleveland, Ohio 44114
Telephone: 216.348.5400
Fax: 216.348.5474
dmovius@mcdonaldhopkins.com
mcavanagh@mcdonaldhopkins.com